

AGENDA: March 25, 2003

4.17

CATEGORY: Consent

DEPT.: City Manager

TITLE: Position in Opposition to AB 136
(Kehoe)—Workers' Compensation—
Disability—Leave of Absence

RECOMMENDATION

Adopt a position in opposition to AB 136 (Kehoe) relating to allowing firefighters to choose leave of absence of up to two years without loss of salary while disabled by injury or illness due to employment (instead of regular Workers' Compensation).

FISCAL IMPACT

There is no fiscal impact directly associated with the opposition of AB 136. If AB 136 is passed into law, there is the potential for a significant fiscal impact in the form of additional disability payments to affected individuals.

BACKGROUND AND ANALYSIS

AB 136, authored by Assembly member Christine Kehoe, would make an addition to Labor Code 4850 to extended temporary disability benefits that are currently provided generally to firefighting and police employees. It would increase the duration of the benefits for firefighting employees from 12 to 24 months.

Currently, nonsafety employees who are disabled due to work-related illness or injury are provided temporary disability benefits of up to two-thirds of their salary or a weekly maximum amount (currently \$602), whichever is lower, under Workers' Compensation. At the present time, for public safety employees, Labor Code 4850 benefits provide for a temporary disability benefit of 100 percent of salary for up to one year. Generally, under the current law, employees who exhaust their Labor Code 4850 benefits and remain disabled from returning to employment are qualified for disability retirement benefits.

At the present time, Labor Code 4850 benefits have a considerable fiscal impact on the City budget. In addition to increased disability costs, this benefit significantly increases utilization of disability benefits and overtime. Temporary disability benefits are tax-exempt. In addition, due to the 24-hour nature of public safety work, disabled employees often have to be replaced by employees receiving overtime compensation.

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Under Labor Code 4850, a temporarily injured safety employee cannot retire until their "4850 time" is exhausted. Therefore, the local agency cannot permanently fill that position until the injured worker returns to modified work or retires. Under the law, the agency cannot retire the injured worker without his or her consent prior to the exhaustion of the 4850 benefits unless they are permanent and stationary as found by the Workers' Compensation Appeals Board.

The League of California Cities (LCC) has taken a position in opposition to this bill, noting that AB 136 is an unfunded State mandate that could have a significant fiscal impact. If successful, the LCC is concerned that the bill could lead to similar demands from other employees subject to Labor Code 4850 benefits. The LCC has stated that this bill is particularly untimely for local agencies to face this proposal during a time of enormous fiscal uncertainty.

At this time, the Santa Clara County Cities Association (SCCCA) has not taken a position on AB 136. Supporters include the California Professional Firefighters and the State Council of the International Association of Firefighters. No independent analysis has been drafted by the Assembly Appropriations Committee.

CONCLUSION

If enacted, AB 136 could have a significant fiscal impact on State and local budgets, and staff is recommending that Council take a position in opposition to AB 136.

PUBLIC NOTICING—Agenda posting.

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607-03-25-03M-E-3^

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Attachment: 1. AB 136